THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.8311 OF 2005

DISPOSED OF ON 23-12-2005

BETWEEN:

BHIMSEN REP. BY HIS POWER OF ATTORNEY

HOLDER SRI.J.MURALIDHAR RAO

AND ANOTHER … PETITIONERS

AND

THE EXECUTIVE OFFICER,

CANTONMENT BOARD,

SECUNDERABAD. … RESPONDENT

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O R D E R :

1. This Writ Petition has been filed by Mr.Bhimsen and M/s.Gangothri Builders and Developers praying to issue a Writ of Mandamus declaring the impugned notice in Lr.No.EB/III/P. No.20/Sanjivaiah CHS/61/1481, dated 31.3.2005 issued by the respondent as illegal and arbitrary and to set aside the same and consequently direct the respondent to sanction building permission as sought for by them in the application dated 22.1.2005.

2. Mr.Bhimsen purchased plot Nos.20 and 21 under a registered sale deed dated 28.10.2004 from K.Sheela, K.Anasuya Bai and M/s Gayathri Constructions. Subsequently, MR.Bhimsen entered into a development agreement with 2nd petitioner i.e. N/s Gangothri Builders and Developers. A building permission application has been submitted to the respondent by the petitioner. The respondent refused to entertain the building permission request by an order-dated 31.3.2005, which reads as under:

" In this connection, this is to inform you, that, your above referred application cannot be considered for the following reasons:

1. The subject property bearing Plot No.20 and 21 stands in the name of Smt.K.Sheela, W/o. Shri K.Jayaraj as per the records available in this office. Shri.K.Jayaraj, Ex-Foreman, Seunderabad Cantonment Board was dismissed from service with effect from 23.11.2000 and this office ordered to recover the loss of Rs.249.39 lakhs from him as per rules and regulations vide this office order dated 27.5.2003.

2. The Cantonment Board in its meeting held on 21.12.2004 has resolved that the matter be taken up with the CBI for taking further necessary action by furnishing full details of the property bearing Plot Nos.20 and 21, Sanjiviah Nagar CHS, Akbar Road, Secunderabad Cantonment so as to recover the loss of Rs.249.39 lakhs from Shri.K.Jayaraj, Ex-Foreman, Secunderabad Cantonment Board. This office has already initiated for recovery as above.

In view of the above facts your building plans cannot be considered at this stage and returned herewith un-actioned."

3. Respondent filed counter affidavit. It is stated in the counter affidavit that K.Jayaraj an ex-employee of the respondent-Board caused loss to the respondent-Board and sold the plots in question in favour of 1st petitioner. Para 5 of the counter reads as under:

" 5. It is respectfully submitted that Sri.K.Jayaraj being an Ex-employee of the Sec'bad Cantonment Board with a view to cause loss to the Cantonment Board cleverly sold the said two plots bearing Plot Nos.20 and 21 in favour of the petitioner No.1 and executed a registered sale deed dt.28.10.2004. While this being so, to enable the petitioners herein to submit their own applications seeking permission for construction on the subject plots, submitted a letter through Mr.Devender Rao, the G.P.A. holder of Smt.K.Sheel and Smt.K.Anasuyabai dt.3.12.2004 and requested the respondent herein seeking permission to withdraw the building applications submitted on plot Nos.20 & 21 and without waiting from the order of respondent, subsequently based on registered sale deeds of the petitioners herein submitted a fresh building application for sanction on the same property and the same was returned by the respondent by passing the impugned orders dated 31.3.2005. The above stated facts categorically reveals that Sri.K.Jayaraj being a beneficiary of the property bearing Plot Nos.20 and 21 through his wife and another sold his property to the petitioners so as to prevent appropriation of his property for the loss caused to the Cantonment Board and alienated the said property in favour of the petitioners. Therefore, the petitioners herein and their vendors including Sri.k.Jayaraj are colluded together and created the registered sale deed dt.28.10.2004 in favour of the petitioners only to cause monetary loss to the respondent Board. Except this property, there is no other property stands in the name of Sri.K.Jayaraj and his family members to recover the amounts liable to pay by Sri.K.Jayaraj. Therefore, in order to protect the Cantonment Board, Secunderabad interest, the respondent herein rightly rejected the applications submitted for permission to construct building in Plot Nos.20 and 21 and the impugned order is valid and enforceable in the eye of law. The respondent herein has not committed any illegality in issuing the impugned order as alleged by the petitioners and it is the petitioners who by hand in glove with Sri.K.Jayaraj and their vendors have created a sale deed in favour of the petitioners which is nonest in the eye of law as the proceedings wee initiated prior to the execution of the sale deeds on the subject property bearing plot Nos.20 and 21. Therefore, the petitioners are not entitled for the relief as prayed for in the writ petition."

4. Heard learned counsel for both the parties.

5. Learned counsel appearing for the petitioners submits that refusal of the building permission application by the respondent-Board is wholly unjustified since K.Jayaraj who is said to be the husband of K.Sheela is in no way concerned with the property, which the petitioners purchased.

6. Learned Standing Counsel appearing for the respondent-Board submits that a CBI case is pending against K.Jayaraj and therefore, the respondent-Board could not entertain the building permission application pending investigation of the criminal case.

7. As on this day the property does not stand in the name of K.Jayaraj. K.Anasuyabai and K.Sheela purchased plot Nos.20 and 21 from Cooperative society under registered sale deeds. In turn they sold the property to the petitioners. If the respondent-Board has any claim with the property, they have to proceed in accordance with law. As on this day there seem to be no steps taken by the respondent-Board to proceed against the plots which are purchased by the petitioners under the registered sale deed. In that view of the matter, the rejection of the building permission application by the respondent-Board is wholly unjustified and accordingly proceedings issued by the respondent-Board are hereby set aside.

9. Accordingly, this writ petition is allowed directing the respondent-Board to receive and consider the application and process the same in accordance with the provisions of Cantonment Board Rules. No costs.

Dt: 23-12-2005. (B.Seshasayana Reddy,J)

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